OLD STANDARDS OF PUBLIC MORALS.[1]

WHOEVER reads the book-lists of publishers, whoever glances over the titles of new books displayed on the counters of the book-shops, must surely have remarked the extraordinary activity shown in recent years by writers on American history. Essays, travels, monographs, biographies of our great men of every sort from frontiersmen to presidents, histories of our country in many volumes, histories of the states, and scores of books on particular phases of our national life, have come from the press year after year in a steadily increasing quantity. It should seem at first sight as if every nook and corner of the broad domain of history must have been by this time fully explored. But a sifting of the output for ten years past leaves no doubt that back of much of this activity is pure commercialism; that some of it is, after all, but a new threshing of the old straw; and that but little of it can be said to be inspired by a sincere desire to do better what has been done before. Meantime great fields of history have been left untilled. No writer has as yet thought it worth while to enrich our literature with an impartial, well-told story of the rise and fall of political parties. Much has been written concerning the political and still more concerning the military events of the great struggle for independence. But where shall we turn for a narrative of the doings and the sufferings of the people during that long period of strife and revolution? No feature of our national existence is more fascinating than the westward movement of population, the great march across the continent. Yet we have no history of this migration—no account of the causes which led to it; of the paths along which the people moved; of the economic conditions which now accelerated, now retarded it; of the founding of great states; of the ever-changing life on the frontier as the frontier was pushed steadily westward over the Alleghenies, across the valley of the Mississippi, and over the plains to disappear in our own day at the foot of the Rocky Mountains. We still wait for a history of the Continental Congress; for the man who shall compress within the limits of a single volume the history of our national life; for the man who within a like space shall tell the marvellous story of our economic and industrial development; and

[1] The President's address to the American Historical Association, December 26, 1905.

for the man who shall do for American what Mr. Lecky has so well done for European morals.

Such a work would indeed be an addition to our historical literature, and not the least interesting part of it would be that devoted to the study of public morals. The code of public morality which has at any time really been lived up to, in our country, is a great help to the understanding of the social and political conditions of that time. The sort of men who find their way into public life; the kind of government which prevails at any time or in any place; the acts done by Congresses, legislatures, city councils, municipal bodies of any sort, are just such as the mass of the people are content to have and often insist on having. What has been the conduct of the people when called on to meet great issues, where expediency, profit, prosperity stood on the one hand, and some principle of public morality on the other hand, is therefore very properly a part of our history, and sheds a flood of light on the phases of life which it is the duty of the historian to record.

Of struggles of this sort the annals of our country furnish many signal instances. When the Continental Congress which gathered at Philadelphia in May of 1775 found itself forced to assume the conduct of a war with the mother-country, it sought to pay expenses by an issue of bills of credit. The fatal step once taken, other issues followed fast and followed faster till depreciation brought the bills so low that to print one cost more than it was worth. On the faces of them were no solemn promises that they should ever be redeemed at any time or place. "This bill", so ran the wording, "entitles the bearer to receive two Spanish milled dollars, or the value thereof in gold or silver, according to the resolution of the Congress held at Philadelphia on the tenth of May 1775." But that the bills should be redeemed at some time and place was the plain intent and expectation of both the Congress and the people. To doubt this intent, to deny that the Congress money was as good as gold, to refuse to take it at par, to refuse to take it at all, was rank toryism. For so doing scores of men were dragged before committees of safety, were reported to provincial congresses, were advertised as enemies of their country, were forced to submit under threats of imprisonment, and were stripped of their property without due process of law.

In the dark days when the British were marching across the Jerseys, when the fate of the rebellious colonies seemed trembling in the balance, Putnam put forth a proclamation warning the people of Philadelphia that if any man refused to sell his goods for continental money, the goods should be seized and the offender cast into prison; Congress called on the Council of Safety for help, and the

Council decreed that any man who would not take the Congress money should forfeit the goods for which the bills were offered, or cancel the debt for which the bills were tendered and pay a fine of five pounds Pennsylvania money.

Congress meantime had again and again solemnly promised that the bills should be redeemed. On June 22, 1775, it was resolved, "That the twelve confederated colonies be pledged for the redemption of the bills of credit"; on December 26, 1775, it was resolved, "That the thirteen United Colonies be pledged for the redemption of the bills of credit"; and after independence was declared each issue was made "on the faith of the United States", and the faith of the thirteen states was pledged for its redemption. When repeated issues had set afloat more than a hundred million dollars in paper, and men began to whisper that Congress never could and never would redeem it, Congress, on December 29, 1778, vigorously denied the imputation.

> Whereas [said the resolution] a report hath circulated in divers parts of America that Congress would not redeem the bills of credit issued by them to defray the expences of the war, but would suffer them to sink in the hands of the holder, whereby the value of the said bills hath, in the opinion of many of the good people of these states, depreciated; and least the silence of Congress might give strength to the said report; Resolved, That the said report is false and derogatory to the honour of Congress.

But the report, unhappily, did not cease to circulate, and in September of 1779 Congress found it necessary to make its good name and credit the subject of a long and elaborate address to the people. In the course of it three questions were discussed: Has the faith of the United States been pledged for redemption of the bills? Are the United States in a condition to redeem them? Is there any reason to apprehend a wanton violation of public faith? In answer to this last question the language of Congress was most vigorous. From the enemy, it was said, had come the

> notable discovery that as the Congress made the money they also can destroy it; and that it will exist no longer than they find it convenient to permit it. . . . We should pay an ill compliment to the understanding and honour of every true American, were we to adduce many arguments to shew the baseness or bad policy of violating our national faith, or omitting to pursue the measures necessary to preserve it. A bankrupt faithless republic would be a novelty in the political world, and appear among reputable nations like a common prostitute among chaste and respectable matrons. The pride of America revolts from the idea: her citizens know for what purposes these emissions were made, and have repeatedly plighted their faith for the redemption of them; they are to be found in every man's possession, and every man is interested in their being redeemed; they must therefore entertain a high opinion

of American credulity, who suppose the people capable of believing, on due reflection, that all America will, against the faith, the honour and the interest of all America, be ever prevailed upon to countenance, support or permit so ruinous so disgraceful a measure . . . it is impossible that America should think without horror of such an execrable deed.[1]

Six months after this bold assertion was uttered the "execrable deed" was done. In March, 1780, the famous forty-for-one act was passed, forty dollars in bills of credit were declared to be equal to one in specie, provision for their redemption at this rate in new-tenor bills was made, and thirty-nine-fortieths of the continental paper debt was repudiated. "This", said Witherspoon, was "the first and great deliberate breach of public faith."

The second was like unto it. Ten years passed away, and our country, a sovereign, free, and independent republic, had taken her place among the nations of the world. The old Articles of Confederation had been abandoned, and the Constitution framed and adopted. The people, as the phrase went, had come under the new roof. Congress had been given express power to pay the debts of the United States, and in 1790 undertook to fund those incurred by the Continental Congress, and to assume and fund those created by the states in the war for independence. The old excuse that Congress could not tax, that the states did not respond to appeals for money, were no longer available, for Congress had ample power to lay taxes, duties, imposts, and excises. For a people living under a high standard of public morals the opportunity, it would seem, had come to wipe off a foul spot on the good name of America. But the chance was not made use of; and when the funding bill passed, it contained a provision for the redemption of the continental bills of credit at one cent in the dollar, and ninety-nine-hundredths of the debt was repudiated.

But the bills of credit were by no means the only kind of indebtedness. There were the loan-office certificates, the lottery tickets, the interest indents, the quartermasters' certificates, the commissary certificates, the final settlements with the soldiers, and many other sorts of paper acknowledgments of debt. What, it was asked, shall be done with these? Some were for funding them at their face-value in interest-bearing stock. Others, and a very considerable number of others, led on by Madison, insisted on discrimination between the original holder of the paper and subsequent takers. Where the certificate, the indent, the lottery ticket, was in the hands of the man who first received it, the obligation should be funded at the value expressed on its face. Where paper had passed from hand

[1] *Journals of Congress*, September 13, 1779.

to hand and was in the possession of one not the original receiver, it should be funded at its highest market value. Here—aside from the effect such an act would have on the credit of the country, a question of commercial expediency—was a question of public morals.

The United States could not be legally forced to pay its debts. Was it not, therefore, morally bound to do so? The anti-funders thought not. If you gave a creditor face-value for an obligation for which he could never have received face-value from a fellow-man, or fifteen shillings for something he had taken or purchased from his neighbor for ten or five or two shillings, you were not only just, but most liberal. When the long struggle ended, the certificates were, indeed, funded at their face-value, not because it was morally right, but because of a bargain by which one party secured the passage of the funding and assumption acts and the other the location of the Federal City on the banks of the Potomac.

The question of the obligation of the body politic to pay its debts now passed to the states, and two years later appeared before the Supreme Court. A citizen of South Carolina, acting as executor, had tendered the treasurer of Georgia in payment of taxes some paper money of that state. The money was refused, and in 1792 suit was brought in the Supreme Court of the United States. The question before it was, May a sovereign state be sued by a citizen of another state? But back of it all was the greater question, May a state be compelled by process of law to redeem promises and pledges for which it stands morally bound? The court decided that a state may be sued; but Chief Justice Jay in delivering its decision added the caution:

> Lest I should be understood in a latitude beyond my meaning, I think it necessary to subjoin this caution, viz.: That such suability may nevertheless not extend to all the demands, and to every kind of action; there may be exceptions. For instance, I am far from being prepared to say that an individual may sue a state on bills of credit issued before the Constitution was established, and which were issued and received on the faith of the state, and at a time when no ideas or expectations of judicial interposition were entertained or contemplated.

Despite this caution the decision was alarming; but a remedy was quickly found. The decision was handed down on the eighteenth of February, 1793, and the very next day a member from Massachusetts gave notice in the House of Representatives that he should move an amendment to the Constitution designed to protect states from being sued in the federal courts. On the twentieth the amendment was offered in the Senate. Less than two weeks of the session then remained. To act in so short a time was hardly possible, and the matter went over to the Third Congress. Ere that body met,

Massachusetts, New York, and Maryland protested against the decision of the court; and when January, 1794, came, the amendment was again offered in the Senate, was quickly adopted, and January 8, 1798, Adams in a message to Congress announced that the amendment "may now be declared to be a part of the Constitution of the United States". Of all provisions of the Federal Constitution this alone deserves to be called infamous, for under its protection many a state has since found refuge from the payment of its just debts. Yet the men who framed it are not to be condemned. They were simply following the standard of public morality set up in their day.

Two years later our annals afford another glimpse of public morals. The French Republic between February 1, 1793, and September 30, 1800, had committed spoliations on the property of certain citizens of the United States. But France also had claims on us, and in the attempt to adjust the indemnities due each party in 1800 the plenipotentiaries of France and the United States fell out. An article was therefore inserted in the convention which declared that "The Ministers Plenipotentiary of the two parties not being able to agree at present . . . upon the indemnities mutually due or claimed, the parties will negociate further on these subjects at a convenient time." But the Senate before ratifying the convention struck out this article, and the document thus altered went back to Napoleon, who again ratified it in July, 1801, with this important addition: "The government of the United States . . . having omitted the second article, the government of the French Republic consents to accept, ratify, and confirm the above convention . . . with the retrenchment of the second article: Provided, That by this retrenchment the two States renounce the respective pretentions, which are the object of the said article." The convention, as amended by the First Consul, now returned to the United States, was again ratified by the Senate, and then proclaimed part of the supreme law of the land by Jefferson in December, 1801.

Our country was thereby released from all liability for damages because of alleged violation of the ancient treaties with France. The price paid for this release was the waiving of the claims of our countrymen for indemnity from France. Having cut off its citizens from the possibility of recovery abroad, the United States became morally bound to pay them at home, for it had received due consideration in exchange. But eighty years and more went by before these spoliation claims were sent for adjudication to the Court of Claims, and ninety years passed before Congress made its first appropriation toward payment of the awards.

Two years after the ratification of the convention of 1801 we had

another financial transaction with Napoleon and purchased Louisiana. By the secret treaty of San Ildefonso, Spain had agreed to retrocede Louisiana to France on certain conditions, one of which was a solemn pledge never to alienate the province. In spite of this, however, Napoleon three years later sold Louisiana to us, an act which was a flat violation of the treaty of San Ildefonso. Nay more, Louisiana at that time did not belong to France. The retrocession had not been consummated, and when in 1803 Napoleon affixed his name and seal to the treaty of purchase, the flag of Spain still floated over every fort, and her authority was still recognized in every quarter of that broad domain. Nor could Napoleon, had Louisiana belonged to France, have sold it without consent of the French Chambers. That consent was not even asked, and the United States took title to Louisiana and received it from a man who had neither the legal nor the moral right to dispose of it.

The province thus acquired was soon cut into two pieces, and for one of them known as the Territory of Orleans a certain form of government was provided by Congress. The legislative power was vested in a governor and a council of thirteen appointed annually by the President without consulting the Senate. This council met when the governor summoned it and went home when he prorogued it, and could not frame a bill of any sort, but merely criticize such as the governor placed before it. In the selection of this body the people had absolutely no voice whatever. Yet the hand which signed that act of congress and made it law was the same that wrote those memorable words in the Declaration of Independence, all governments derive "their just powers from the consent of the governed". To the American of 1804 this was a living truth, not a "glittering generality", and such a storm of indignant protest followed the passage of the act organizing the Territory of Orleans that at the next session of Congress it was repealed.

Turning from the Federal Constitution and statutes to the constitutions and laws of the states, we find them richer still in illustrations of old-time standards of public morals. While the war for independence was under way, the states as well as Congress had issued millions of dollars in paper money, had made it legal tender, and had provided heavy punishments for any one who would not take it at the face-value. The merchant, the shopkeeper, the farmer who presumed to demand for his goods or produce a larger sum in paper than in specie was an enemy of his country, a forestaller, an engrosser, a sharper, and might be stripped of his property, fined, imprisoned, or banished from the state. All respect for the rights of property was thus overthrown. Such measures, said a body of

protestants against the Pennsylvania legal-tender act of 1781, "render our courts of justice the ministers of iniquity. Instead of compelling the performance of contracts, they not only permit and countenance, but aid and assist the violation of them. Hence it must follow that the magistrates will be disrespected, the laws contravened and the morals of the people polluted." "For two or three years", said Witherspoon, "we constantly saw and were informed of creditors running away from their debtors, and the debtors pursuing them in triumph, and paying them without mercy." Pelatiah Webster declares that the legal-tender currency "polluted the equity of our laws, turned them into engines of oppression and wrong, corrupted the justice of our public administration, destroyed the fortunes of thousands who had most confidence in it", and ruined "the morality of our people".

To a people struggling for political life much should be forgiven. But when the war was fought and won, when the states were free and independent, the evil practice was continued. During the hard times of 1785 and 1786 seven states put forth more paper money and strove to keep it at par by legal-tender acts. Again the sanctity of contracts was violated, and dishonest men made haste to pay their debts in worthless paper. The Superior Court of Rhode Island during one sitting heard twenty bills in equity filed by debtors who sought to satisfy mortgages. They came bringing the money in handkerchiefs, pillow-cases, and bags. In the newspapers, for several months in 1786, were columns of notices by the judges that sums in lawful money bills had been deposited with them by men who had in all respects complied with the legal-tender law. In South Carolina the grand-jury of Ninety-Six in a presentment in December, 1788, declared "that the many acts of the legislature screening the debtor from the just demand of his fair and bona fide creditor have had a very pernicious influence on the morals and manners of the people".

The framers of the Constitution undoubtedly wished and believed that they had put an end to such practices by that wise provision that no state shall issue bills of credit, or make anything but gold and silver legal tender for debt. But the Constitution had not been long in force before the states began to charter banks and gave each one of them authority to issue bills of credit. That a principal cannot give an agent authority to do an act which the principal cannot lawfully do himself is primary law. Nevertheless the right to issue paper bills was granted, our country entered on a new era of paper money, and in the course of our second war with Great Britain every bank outside of New England suspended specie payment. Desper-

ately hard times followed; the legislatures were appealed to as usual for relief and again enacted laws interfering with the collection of debts and violating contracts. In some states temporary stay laws put an end for the time being to all suits for the collection of debts. In others, if the creditor would not take bank paper, the debtor had two years in which to replevy. In still others, all property seized in satisfaction of a judgment must be appraised by a jury of the neighborhood, and when offered for sale by the sheriff must bring three-fourths of the appraised value, or it could not be sold. Here was a most effective stay law, for it was indeed a hard-hearted jury that would not appraise a poor debtor's property at five times its actual value.

In many points of view the Americans of Washington's day and the American of our day have changed places. Customs, usages, and institutions which the fathers held to be against good public morals, we tolerate; and then, in our turn, proscribe by law a host of practices our forefathers looked upon as highly beneficial to the state. A signal instance of such a change in the moral standard is our present hostility toward the lottery. During the years immediately following the war for independence, when there were not in the whole country as many people as to-day dwell in Pennsylvania or New York, it was not possible to obtain by taxation the money needed for all sorts of public betterments. Very few communities were willing to have their taxes increased in order that a street might be paved, a wharf constructed, a fire-engine bought, a city hall enlarged, or a bridge built across some neighboring stream, when the funds could be secured by so simple a process as the sale of a few thousand tickets, and the distribution of a few hundred prizes. To solicit subscriptions for the discharge of a church debt, the purchase of a bell, the erection of a steeple or a parsonage, the purchase of books or physical apparatus for a college, when the money could be secured more quickly by a lottery, was a waste of time. Why should a canal company, a turnpike company, the projectors of a woolen-mill, iron-furnace, or glass-works seek a market for stock, when any legislature stood ready to grant authority to start a lottery with as many drawings as were necessary to raise the needed money?

After the Revolution, when our country began to develop at a rapid pace, and lotteries increased astonishingly in number, the economic effects became apparent, and many a state forbade the sale within its boundaries of the tickets in lotteries not authorized by itself. But not until the increase of the people in numbers and in wealth made it possible to raise money for public improvements

by taxation, or by the sale of stock, was the lottery looked on as against good public morals, and the thirties came before Massachusetts, New York, Pennsylvania, and Maryland put it under ban.

In the bill of rights of the first constitution of New Hampshire is the assurance that "every individual has a natural and unalienable right to worship God according to the dictates of his own conscience and reason; and no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshiping God in the manner and season most agreeable to the dictates of his own conscience. . . ." Yet, in defiance of this assertion, men were restrained of their liberty by the provisions "that no person shall be capable of being elected a Senator, who is not of the Protestant religion", and that every member of the House of Representatives "shall be of the Protestant religion", and that no person should be chosen president of the state or delegate to the Continental Congress who was not of the Protestant religion. In the declaration of rights of Massachusetts, in the constitution of New Jersey, in the declarations of rights of Pennsylvania, of Delaware, and of Maryland, were assertions of absolute religious liberty quite as emphatic. Yet in Massachusetts the governor and lieutenant-governor, councillors, senators, and representatives before taking office were each required to declare, "I believe the Christian religion and have a firm persuasion of its truth"; and in New Jersey none but Protestants were "capable of being elected into any office of either branch of the legislature". "Nor can any man", said Pennsylvania, "who acknowledges the being of God be justly deprived or abridged of any civil right as a citizen"; yet each member of the legislature before taking his seat was required to make a declaration in which were the words, "And I do acknowledge the scriptures of the Old and New Testament to be given by divine inspiration". Delaware required her legislators to swear to a belief in the Trinity as well as in the divine inspiration of both Testaments; and Maryland exacted from every holder of offices of profit or trust "a declaration of his belief in the Christian religion". North Carolina decreed that "no person who shall deny the being of a God, or the truth of the Protestant religion, or the divine authority either of the Old or New Testament, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit in the civil department within this State." South Carolina enacted that "The Christian Protestant religion shall be deemed and is hereby constituted and declared to be the established religion of this State", and allowed none but Protestants

to hold office. Georgia excluded from her important offices all men who were not Protestants.

Under these standards of public morals all forms of religious belief were tolerated; yet only those men who exercised this toleration in such manner as to become Protestants or Christians could be eligible to offices of state. The preaching, as it should always be, was above the practice. The moral standard, as it should always be, was far in advance of the times. To the credit of the fathers, many of them soon overtook it. When the Federal Constitution was framed in 1787, Church and State were absolutely divorced. The word "God" was nowhere inserted, and religious belief was nowhere recognized as a qualification for anything. This, in the opinion of many, was a great step backward. A delegate to the Massachusetts state convention to consider the Constitution "shuddered at the idea that Romanists and pagans might be introduced into office, and that Popery and the Inquisition may be established in America". In the convention of North Carolina, and in many a newspaper criticism of the New Roof, the charge was made that, without some religious test, Jews, infidels, papists, were as eligible to the presidency and to seats in Congress as any Protestant or Christian. The absence of religious tests and qualifications was in reality a step forward, and was quickly followed in several states. Pennsylvania in 1790 abolished the test oath formerly required of her legislators; New Hampshire in 1792 cast away the religious test previously exacted from her governors and legislators; and Delaware ceased to ask her office-holders if they believed in the Trinity and the divine inspiration of the Testaments. After 1790 South Carolina no longer required members of the House of Representatives to be Protestants; and in 1798 Georgia removed her religious test for office-holding, and decreed that no person should "be denied the enjoyment of any civil right merely on account of his religious principles". Of the three new states which entered the Union before the end of the century (Vermont, Kentucky, and Tennessee), Tennessee alone adhered to the old standard. Her bill of rights declared "That no religious test shall ever be required as a qualification to any office or public trust under this State". But her constitution declared that "No person who denies the being of a God or future state of rewards and punishments shall hold any office in the civil department of this state."

In six of these early state constitutions are declarations that neither cruel nor unusual punishments shall be inflicted. The principle asserted erected no new standard of public morals, for the words were borrowed from that Great Bill of Rights enacted by Parliament

nearly ninety years before the first state constitution was adopted. But it is worth while to consider what the fathers regarded as mild punishment, what sort of penalties awaited the transgressor of their code of public morals. Publicity, in their opinion, was the great deterrent of crime. It was not enough, therefore, that the criminal should be punished; he should be punished in the presence of the people, that all might behold justice administered and the law vindicated, and learn from impressive examples to shun the path of the wicked. The man or woman on whom death was inflicted was accordingly hanged in the open before a crowd of men and women, who came bringing their children with them. The list of crimes so punishable in colonial days was a long one: in Massachusetts, Connecticut, and Rhode Island ten; in New York sixteen; in Virginia and afterward in Kentucky twenty-seven; in Pennsylvania twenty on first conviction, and on a second conviction all save larceny were capital crimes.

For the evil-doers whose offenses did not merit death there were flogging, branding, cropping, the pillory, and the ducking-stool. Each punishment was inflicted in public, and many an offender went forth from the place of expiation bearing on his forehead or his hand a mark which made his character known to all who met him. New Hampshire branded her burglars with a B on the right hand for the first offense, on the left for the second offense, on the forehead if the crime was committed on the Lord's Day.

Massachusetts punished ten crimes and felonies with death; branded an F on the forehead of the forger of a bank-bill, a B on both cheeks of the burglar guilty of a second offense, a T on both cheeks of the man twice convicted of larceny, and M on the forehead for manslaughter; and gave to her magistrates an elaborate assortment of penalties from which to choose for minor offenses. The perjurer might be fined and pilloried for two hours at diverse times and places as the judge thought proper, and be publicly whipped on the naked back on three occasions in three different places. The thief for a second offense, besides being branded, might be condemned to hard labor for life and be made to "wear a chain round his leg with a large clog fastened to the other end thereof"; the forger might be pilloried, cropped on one ear, whipped, fined, and imprisoned; the counterfeiter could be set in the pillory and have one ear cut off, and thence be driven with a rope about his neck to the gallows, where with one end of the rope thrown over the gallows he must stand for one hour. On the way from the pillory to the gallows he might be given forty lashes.

In Connecticut the man who married his sister-in-law could be

set on the gallows with the wife, each with a rope about the neck, for one hour. The pair must then be taken to the common jail, and while on the way be given forty lashes each on the bare back; and "forever after", says the law, "wear a capital I two inches long" of some bright-colored cloth sewed on the outside of the arm or on the back. The perjurer should be fined twenty pounds; if he could not pay, then he must stand for an hour in the pillory "and have both ears nailed". The horse-thief must return treble the value of the horse and pay a fine of ten pounds, receive fifteen lashes, pass three months in the workhouse, and on the first Monday of each month receive ten stripes and be seated astride the wooden horse for two hours before each whipping.

Delaware punished her criminals according to the laws in force in Great Britain. If the crime was capital in the mother-country, it was so in the colony. If under English law the offender might plead benefit of clergy, he could do so in Delaware, and without being required to read like a clerk, was branded on the left thumb in open court. M stood for manslaughter and T for any felony.

The North Carolina law on the subject of perjury gives a graphic description of this process of ear-cutting. The offender, whether man or woman, "shall stand", says the law, "in the pillory one hour, having his or her ears nailed during the whole time, and at the expiration of the said hour, both ears of the offender shall be cut off and severed from the head, leaving them nailed on the pillory until the setting of the sun."

In Pennsylvania the robber and the thief, whether man or woman, after receiving thirty-one lashes at the whipping-post was condemned to have sewed in plain view on the left sleeve of the outer garment between the shoulder and the elbow a Roman T of red, blue, or yellow cloth as the magistrate pleased, and wear it every day from sunrise to sunset for six months. In Maryland each county was required to have an assortment of branding-irons. S on either cheek meant seditious libeller; F meant forger; a T on the left hand indicated a thief; and R on the shoulder a vagabond or rogue. In Delaware the penalties for blasphemy were flogging, the pillory, and the letter B branded on the forehead. In Pennsylvania every pauper who received alms of the public (and his wife and children, if he had any) must wear on the sleeve of the outer garment a large P of red or blue cloth, and after it the initial letter of the county, town, or city by which the alms were given.

The standard of public morals under which the use of the lash, the branding-iron, the pillory, and the ducking-stool was possible was no invention of the fathers. It was that of the mother-country transferred to the colonies, and was greatly modified after the Revo-

lution. Many of the states cut down the list of crimes punishable by death, forbade the use of the branding-iron, cropping, and flogging. But the development of a more humane standard was slow; and many of the old penal codes were in force and many of the old punishments were inflicted well down into the nineteenth century. In Boston in 1789 five thieves were flogged, two more stood under the gallows, and a counterfeiter on the pillory. In 1789 in the same city eleven offenders were sentenced to be flogged in front of the State House, and in 1803 two men were pilloried for one hour on two consecutive days. So late as 1822 a felon was flogged on the campus of Yale College, and in 1817 a sailor underwent a like punishment in Philadelphia. In 1821 the Supreme Court of Georgia sentenced a woman to be ducked in the Oconee; and in 1819 in Georgia, and in 1824 in Philadelphia, common scolds were ordered to the ducking-stool; but the sentence was not executed. Later yet Judge Cranch in Washington sentenced Mrs. Ann Royal to be ducked in the Potomac. But the day for such punishments had passed away, and she was fined instead.

There were, however, even then states on whose statute-books the old code still had a place. In Rhode Island the convicted forger of notes, bank-bills, or securities might be placed in the pillory, have a piece of each ear cut off, be branded while in the pillory with the letter C, imprisoned for six years, and fined. For perjury the penalty was cropping, branding, and three hours on the pillory; for duelling, a rope about the neck and a ride in a cart to the gallows, where the offender must stand for an hour. The man guilty of arson, the law required, should be pilloried, cropped on both ears, and branded with the letter B. Delaware flogged, pilloried, and sold her criminals to service, and required some to wear on the outer garment between the shoulders a scarlet letter four or six inches long to designate his crimes. A Roman F meant forger; T meant thief; R a receiver of stolen goods. Down to the Civil War, branding on the hand was occasionally inflicted on men guilty of slave-stealing.

The second quarter of the nineteenth century was a period of general reform. Customs, usages, and institutions which a few years before passed unchallenged were vigorously attacked as ruinous to good morals. Executions of criminals in the presence of great crowds of men and women were denounced as scandalous, and one by one the states forbade them. Imprisonment for debt was abolished as a practice wholly at variance with the public welfare and grossly unjust to the individual. Slavery was attacked as a sin, the lottery was proscribed—in short, new standards of public morals were erected.

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